

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
IN CLERKS OFFICE  
2004 JUN 24 P 12: 79

CIVIL ACTION NO.

04 11447 MLW

J.L. 2 NGUYEN, INC.,  
Plaintiff

v.

FRANKLIN FRYER, JEFFREY  
RICHARDS, ROBERT J. LEARY,  
RICHARD T. MARINO and  
JAMES THOMAS, As They  
Constitute The Board of License  
Commissioners For The Town of  
Weymouth,  
Defendants

MAGISTRATE JUDGE Dein

RECEIPT # 56876  
AMOUNT \$ 0  
SUMMONS ISSUED PIX  
LOCAL RULE 4.1 1  
WAIVER FORM 1  
MCF ISSUED 1  
BY DPT. CLK. EDM  
DATE 6/24/04

**NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. §1441 (a)**

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS:

Defendants Franklin Freyer, Jeffrey Richards, Robert J. Leary, Richard T. Marino and James Thomas, as they constitute the Board of License Commissioners for the Town of Weymouth, respectfully give notice that they have removed the above entitled action to the United States District Court for the District of Massachusetts, civil section, from the Superior Court for the Commonwealth of Massachusetts in and for Norfolk County and for their notice of removal state:

1. Defendants Franklin Freyer, Jeffrey Richards, Robert J. Leary, Richard T. Marino and James Thomas As They Constitute the Board of License Commissioners for the Town of Weymouth (hereinafter "Defendants") are named as defendants by Plaintiff J.L. 2 Nguyen, Inc. in a civil action filed in the Superior Court of the Commonwealth of

Massachusetts in and for Norfolk County entitled J.L. 2 Nguyen, Inc. v. Franklin Freyer, Jeffrey Richards, Robert J. Leary, Richard T. Marino and James Thomas As They Constitute the Board of License Commissioners for the Town of Weymouth, Civil Docket No. NOCV2004-00839-A. See copy of Complaint attached as "Exhibit A." On June 1, 2004, the Defendants were served with a Summons and copy of the Plaintiff's Complaint. See copy of Summons attached as "Exhibit B." The Defendants have not yet answered the Summonses and Complaint, nor has an appearance of counsel been filed on their behalf.

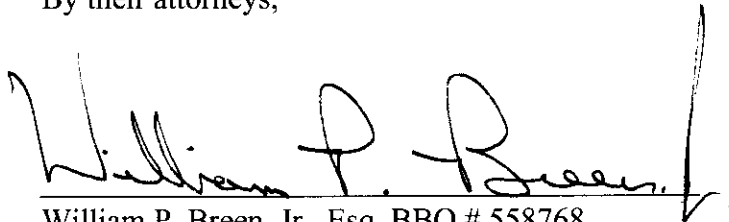
2. This is a suit of wholly civil nature filed in a Massachusetts State Court. The action is pending in Norfolk County, Massachusetts and, accordingly, under 28 U.S.C. §§101 and 1441(a), the United States District Court for the District of Massachusetts is a proper forum for removal.
3. The United States District Court has original jurisdiction over this action under 28 U.S.C. §1331, due to questions of federal law raised by the Complaint. Specifically, the Plaintiff alleges that the Defendants are liable for "a violation of the Plaintiff's Civil Rights as enumerated in 42 U.S.C.A. §1983." See Complaint, Count 1. Based on the Complaint and upon discussions had with the Plaintiff's attorney prior to the removal of this matter, the Defendants understand the Plaintiff intends that the allegations of Count 1 state a claim of civil liability under 42 U.S.C.A. §1983.
4. The Defendants are filing this Notice within thirty (30) days of the service of the Summons and Complaint upon them, within thirty (30) days of the date this action became removable, and within the time for filing this petition. See 28 U.S.C. §1446.

5. The Defendants will file a Notice of Filing this Notice of Removal and a copy of this Notice with the Clerk of the Superior Court of Massachusetts, County of Norfolk.
6. Pursuant to Local Rule 81.1(a), the Defendants will request of the Clerk of the Superior Court of Massachusetts, County of Dedham, certified or attested copies of all records and proceedings in the State Court and certified or attested copies of all docket entries therein and will file the same with this Court within thirty (30) days after the filing of this Notice of Removal.

WHEREFORE, Defendants Franklin Freyer, Jeffrey Richards, Robert J. Leary, Richard T. Marino and James Thomas As They Constitute the Board of License Commissioners for the Town of Weymouth, give notice that the above action now pending in the Superior Court of the Commonwealth of Massachusetts in and for Norfolk County is removed from that Court to this United States District Court.

Respectfully submitted,

The Petitioners,  
FRANKLIN FRYER, JEFFREY RICHARDS, ROBERT J.  
LEARY, RICHARD T. MARINO and JAMES THOMAS,  
As They Constitute The Board of License Commissioners  
For The Town of Weymouth,  
By their attorneys,

A handwritten signature in black ink, appearing to read "William P. Breen, Jr.", is written over a horizontal line.

William P. Breen, Jr., Esq. BBO # 558768  
MURPHY, HESSE, TOOMEY & LEHANE, LLP  
300 Crown Colony Drive, Suite 410  
Quincy, MA 02110  
(617) 479-5000

Dated: June 22, 2004

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) J.L. 2 Nguyen, Inc. v. Franklin Fryer
- 
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
- None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME William P. Breen, Jr., Esq.ADDRESS 300 Crown Colony Drive, Suite 410, Quincy, MA 02169TELEPHONE NO. (617) 479-5000

JS 44 (Rev. 3/99)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

J.L. 2 Nguyen, Inc.

(b) County of Residence of First Listed Plaintiff Norfolk  
(EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS**

Franklin Fryer, Jeffrey Richards,  
Robert J. Leary, Richard T. Marino and  
James Thomas Norfolk  
County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Gregory F. Galvin, Esq.  
775 Pleasant Street, Unit 16  
Weymouth, MA 02189; (781) 340-5335

Attorney's (Firm Name)

William P. Breen, Jr., Esq.  
Murphy, Hesse, Toomey & Lehane, LLP  
300 Crown Colony Drive, Suite 410  
Quincy, MA 02169; (617) 479-5000

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF  
Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395M) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

The Plaintiff alleges that the Defendants are liable under 42 U.S.C. §1983 for the Defendants prosecution of the Plaintiff's violation of Massachusetts liquor laws.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

June 22, 2004

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

William P. Breen, Jr.

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE